



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 10, 1993

Mr. Marvin J. Titzman
Executive Director
Texas Surplus Property Agency
P.O. Box 8120
San Antonio, Texas 78208-0120

Letter Opinion No. 93-80

Re: Reconsideration of Attorney General
Opinions JM-417 (1985) and JM-497
(1986) (ID# 18978, ID# 18979)

Dear Mr. Titzman:

In your two requests you ask about the continuing validity of Attorney General Opinions JM-417 (1985) and JM-497 (1986). We will address these two questions individually.

Attorney General Opinion JM-417 determined that the Surplus Property Agency does not receive monetary donations from the federal government and that salaries of agency employees are derived from the fees that the agency charges other state agencies and local governments to participate in the program. *See also* Attorney General Opinion JM-497. Thus the statutory requirement that agencies look to the federal government or to a private donor for contributions to the retirement system does not apply to the operations of the surplus property agency. That opinion was based in part on section 35.405 of Title 110B, V.T.C.S., which is now located at section 825.406, Government Code. The placement of the statute in the Government Code was intended to be a nonsubstantive recodification. *See* Acts 1989, 71st Leg., ch. 179 § 3, at 819 (indicating intent of nonsubstantive recodification). Other than slight changes in wording and citations, section 825.406 has not changed since JM-417 was issued.

A prior opinion may be presumed to state the law unless modified or overruled by a subsequent attorney general opinion, statutory amendment, or judicial decision. The statutes that required the result obtained in Attorney General Opinion JM-417 have not been amended in a manner that requires a change in that result. Nor have we identified an attorney general opinion or a judicial decision that would change the result. Thus we believe that Attorney General Opinion JM-417 remains a correct statement of the law and we decline to formally reconsider it.

The same presumption applied to Attorney General Opinion JM-497 obtains a different result because of an intervening change in the law. Attorney General Opinion JM-497 determined that a rider in the appropriations act governing state agency workers' compensation payments did not apply to the Texas Surplus Property Agency, because the agency did not receive funds appropriated by the appropriations act. The year after that

opinion was issued, the appropriations act included a specific appropriation for the agency. Acts 1987, 70th Leg., 2d C.S., ch. 78, art. I, § 1, at 502. Thus the rider, which was continued in the new appropriations act, presumably was applied to employees of the agency. *Id.* art. V, § 58, at 860. The current appropriations act also contains an appropriation for the agency and the same rider. Acts 1991, 72d Leg., 1st C.S., ch. 19, art. I, at 624; *see also id.* art. V, § 57, at 1033. Thus the surplus property agency is currently covered by the workers' compensation rider found in the 1991 Appropriations Act.

We note that Senate Bill 381, adopted by the 73rd Legislature, abolishes the Surplus Property Agency, subject to any necessary federal approval. Section 2.12 of that bill transfers the duties and property of the agency to the General Services Commission effective September 1, 1993. Acts 1993, 73d Leg., ch. 906. During the period of time that the agency takes to close down its operations, the newly adopted appropriations act for fiscal years 1994 and 1995 will govern any workers' compensation matters that arise after September 1. *See* Acts 1993, 73d Leg., ch. 1051.

S U M M A R Y

The statutes that required the result of Attorney General Opinion JM-417 (1985) have not changed since that opinion was issued, leaving the opinion valid. The Texas Surplus Property Agency was included in the 1992-93 General Appropriations Act and was thus made subject to the general rider in that act governing state agency workers' compensation payments. The change in the law changes the result of Attorney General Opinion JM-497 (1986).

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee